

REMARKS

In reply to the Office Action dated December 21, 2004, claims 104 and 107-112 are currently under examination in the Application. Reconsideration is respectfully requested in view of the following remarks.

Applicants wish to thank the Examiner for the allowance of claims 104 and 107.

***Claim Rejections – 35 U.S.C. § 112, first paragraph (written description, new matter)***

Claims 108-112 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the Applicants, at the time the application was filed, had possession of the claimed invention. In particular, the Action continues to allege that the claims constitute new matter in that there is allegedly no support in the specification for a composition comprising the claimed polypeptide in combination with a non-specific immune response enhancer. The Action contends that the specification only discloses non-specific immune response enhancers in the context of vaccines. The Action goes on to allege that the two terms differ in scope and therefore, to conclude that there is no support in the specification as filed for the scope of the claimed invention.

Applicants traverse the rejection on the following grounds.

Applicants submit that they are not arguing that the instant limitations are obvious in view of the instant disclosure as implied by the Action. Rather, Applicants submit that the description in the specification is such that the skilled artisan would readily appreciate that Applicants were actually in possession of the claimed compositions. Similar to the quoted text on page 3 of the Action, Applicants further note that “The claimed subject matter need not be described in *haec verba* to satisfy the written description requirement. The application need not describe the claim limitations exactly, but only so clearly that one having ordinary skill in the pertinent art would recognize from the disclosure that applicant invented the subject matter including such limitations”. (*In re Herschler*, 591 F.2d 693, 200 U.S.P.Q. 711, 717 (C.C.P.A. 1979). Moreover, Applicants submit that this standard is specifically indicated by the U.S.P.T.O.

in the Written Description Guidelines (see *Guidelines for Examination of Patent Applications Under the 35 U.S.C. § 112, para. 1, "Written Description" Requirement* - Federal Register: January 5, 2001 (Volume 66, No. 4, pgs. 1099-1111). For example, the Guidelines state at page 1106, first column:

If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. (emphasis added)

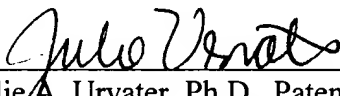
As such, Applicants maintain that the skilled artisan would readily appreciate in view of the instant disclosure that Applicants were in possession of the claimed invention at the time the application was filed. Reconsideration and withdrawal of the rejection is respectfully requested.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that the claims remaining in the application are now allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

  
Julie A. Urvater, Ph.D., Patent Agent  
Registration No. 50,461

JAU:tj  
Enclosure:  
Postcard

701 Fifth Avenue, Suite 6300  
Seattle, Washington 98104-7092  
Phone: (206) 622-4900  
Fax: (206) 682-6031

552272\_1.DOC